IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2007

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THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1474 of 2007

N. Chokammal .. Petitioner

Vs.

1. The District Collector and
   District Magistrate
   Kancheepuram District
   Kancheepuram.

2. The Secretary to Government
   Government of Tamil Nadu
   Prohibition and Excise Department
   Fort St. George, Chennai-9. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus calling for the records of the Ist Respondents herein No. BDFGISSV No. 51 of 2007 dated 16.8.2007 by setting aside the order of detention passed by the Ist respondent herein daed 16.8.2007 produce the detenu before this Court and setting the detenu by name Guna alias Gunasekaran, S/o. Namasivayam at liberty now detained in Central Prison, Puzhal, Chennai.

For Petitioners : M/s.Ganesh & Ganesh
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

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COMMON ORDER

(Order of the Court was made by P.D.DINAKARAN,J.)

The first respondent herein clamped an order of detention as against the detenu Guna @ Gunasekaran, son of the petitioner, as the

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said authority arrived at the subjective satisfaction that the said detenu is a Goonda and he has to be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2.1. The order of detention dated 16.8.2007 came to be passed based on the ground case said to have taken place on 22.6.2007 at about 17.45 hours, when one Parthiban, who was in-charge of a Cool Drinks Stall situated at Guduvancherry bazzaar, was doing his work, the detenu along with his associates came in two cars under his leadership by possessing weapons like aruva, patta knife, wooden logs and apprehended the complainant within the shop and robbed Rs.1100/- from him. On hearing the hue and cry, the public rushed to the spot and they were threatened by the detenu and his associates at the point of knife and country bombs by uttering that they would do away them. The public ran hither and thither apprehending danger to their lives and the nearby shops were closed, resulting in traffic dislocation. Due to the atrocious activities, the normalcy in that area got dislocated and terror and panic was created. In the melee, the detenu and his associates escaped from the spot. Based on the complaint, a case was registered in Crime No.331 of 2007 on the file of Guduvancheri Police Station for the offences punishable under Sections 147, 148, 341, 506(ii), 395, 397 IPC read with Sections 3 and 5 of the Indian Explosive Substances Act, 1908 and Section 25 (1) (a) (1)(b) of the Arms Act. The detenu surrendered before the learned VII Metropolitan Magistrate, George Town, Chennai and he was remanded to judicial custody.

2.2. The first respondent, taking the above case as a ground case and three adverse cases pending against the detenu in Crime Nos.327 and 328 of 2007 on the file of Guduvancheri Police Station and Crime No.364/2007 on the file of Maraimalai Nagar Police Station for the offences punishable under Sections 147, 148, 341, 363, 384, 506(ii), 397 and 307 IPC, and having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

3. Challenging the abovesaid detention, the petitioner has come forward with the present petition seeking a writ of habeas corpus to

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call for the records pertaining to the detention order passed against the detenu by the first respondent in Proceedings BDFGISSV.No.51/2007, dated 16.8.2007, set aside the same and to direct the respondents to produce him, who is now detained at Central Prison, Puzhal, before this Court and set him at liberty.

4. The learned counsel for the petitioner, inviting our attention to para 5(i) of the grounds of detention wherein it is stated that the detenu was in remand in connection with the ground case and four adverse cases, contends that there is no valid remand on the date of passing of the impugned order of detention and therefore, the order of detention is vitiated on the ground of non application of mind on the part of the detaining authority.

5. We have perused the entire materials placed before us. A perusal of the same makes it clear that the detaining authority had stated that the detenu is in remand in connection with the ground case as well as four adverse cases. However, in para 5(ii) of the grounds of detention, the detaining authority has stated that the detenu was remanded from 1.8.2007 to 13.8.2007 and on 13.8.2007 his remand extension was ordered to be call on 27.8.2007. Therefore, it is clear that on the date of passing of the order of detention viz., 16.8.2007, the detenu was not in valid remand. The above discrepancy, which went unnoticed by the detaining authority while passing the order of detention, reflects his non application of mind.

6. We are, therefore, satisfied that the impugned order of detention is vitiated on the ground of non application of mind on the part of detaining authority. Hence, the order of detention is quashed. The habeas corpus petition is allowed. The detenu is directed to be released forthwith, unless he is required in connection with any other case.

ATR

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

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To:

1. The District Collector and
   District Magistrate
   Kancheepuram District
   Kancheepuram.

2. The Secretary to Government
   Government of Tamil Nadu
   Prohibition and Excise Department
   Fort St. George, Chennai-9.

3. The Superintendent
   Central Prison
   Puzhal, Chennai.

4. The Public Prosecutor
   High Court, Madras.

5. The Joint Secretary to Government
   Public Law and order Department,
   Fort St George, Chennai.

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